

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10524 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SUO MOTU

Versus

VATVA INDUSTRIES ASSOCIATION

Appearance:

SUO MOTU for Petitioner
SINGHI & BUCH ASSO. for Respondent No. 1
MR H.J. TRIVEDI, for Respondent No.2 GPCB
MR SHIRISH JOSHI for Respondent Nos. 3 to 7
NOTICE SERVED for Respondent No. 8
MR D.P. JOSHI, ASSTT. GOVERNMENT PLEADER

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE J.R.VORA
Date of Order: 01/09/1999

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

This suo-motu petition was at the instance of a

note filed by the Assistant Environment Engineer of the Gujarat Pollution Control Board. That note dated 1.12.1998 records that during the visits and inspections, Board officials observed huge quantity of hazardous waste dumped near Ramol village. It is stated that earlier under similar circumstances, this Court had initiated suo-motu action against some industrial units situated at GIDC, Vatva, in Special Civil Application No. 5258/97 to 5264/97 and the directions issued in those proceedings were not complied with. It is then stated that the Gujarat Pollution Control Board had received a number of complaints from the nearby villagers/farmers and the President of the Ramol Nagar Palika, alleging that due to the pollution by some units, their well-water was contaminated with colour. Accordingly, it is stated that the Board visited the site on 13th October, 1998. A copy of the report was attached with this note. It is then stated that in view of the above, the High Court was requested to take appropriate action against the defaulting units and the Vatva Industries Association may be directed to take action to stop unauthorised movement/disposal of waste by its member units. By order dated 8.12.1998, this note was registered as a petition. It is stated that this note was directly given by the learned Counsel to the Court on that day. This Court had directed the Association to appear through a responsible officer with necessary particulars. Five industrial units shown in the report were required to be furnished copy of the report with notice to the Association.

2. The five units who were named, appeared and they filed their affidavit and by order dated 26.7.1999, notices to those respondents No.3 to 7 were discharged. The counsel for the Board was directed to investigate into the facts against the proprietorship of the dumping site and its managers as well as the persons responsible for dumping the industrial waste in the said area and submit the same before the Court. A visit report has been filed with the affidavit in reply of the Assistant Environmental Engineer Mr. P.N. Pandya. In that report it is stated that the Assistant Environmental Engineer and the Senior Scientific Assistant had visited the Ramol Nagar Palika office and they contacted a clerk and a peon and gathered the information about the survey numbers. Survey No.329A belongs to the Ahmedabad Electricity Company, while in Survey No.329-B, a 'Prathmik Arogya Kendra' is situated. On survey No.330, the sludge was dumped and that land belonged to 'Bhudan Karyalaya' and owned by one Akbarmiya. It is stated that Akbarmiya passed away some time back and the land was with Mr.

Jakshi Barwad and he is the person who can tell as to who had dumped the sludge and why. It is stated that they also contacted Shankerbhai Patel, President of the Vatva Industries Association, to identify the industries who had dumped the sludge waste, but they were told that the area was out of G.I.D.C and not within the purview of the Vatva Industries Association. It is stated that they therefore were not knowing as to who had dumped the sludge waste, and that they have asked the owner of the land Jakshi Bharwad to tell about the dumping of the solid waste.

3. A peculiar feature of this petition is that a Note prepared by an Assistant Environmental Engineer of the Gujarat Pollution Control Board was directly submitted to the High Court, through the Board's Counsel as stated by him, with a request to take action against the defaulting units and issue necessary directions on the Vatva Industries Association to take steps to stop unauthorised movement/disposal of waste by its member units. It was sought to be submitted that this note was placed before the Court pursuant to the directions given earlier in a group of matters being Special Civil Application Nos. 5258/97 to 5264/97, which was disposed of by a Division Bench of this Court on 17.11.1997. A copy of that order is shown to us. That was a suo-motu petition against six named industries and not against the Association. In that order, the Court took note of the fact that one of those six industries had its own arrangement for storage of hazardous waste material and proper records were maintained. It also took note of the fact that one other industry out of those six, were closed since long and there was no question of that unit dumping any hazardous waste. The remaining four units who were Alpanil Industries, Assish Chemicals, Tapship Industries and Meghmani Dyes and Intermediates, made a statement that they are willing to pay a sum of Rs. 20,000/- each for the default committed by them within two weeks from that date. Those units were directed to pay the amount within two weeks and the registry was directed to deposit the same in the default account. It is made clear by the learned Counsel that the note of the Assistant Environmental Engineer on the basis of which suo-motu action was started, was not filed in connection with non-payment of the amount directed to be paid in that earlier order of the Court by those four units. Reliance was however, placed on paragraph 2 of the order in which it was recorded that assurance was given to the Court that henceforth all the units will see that hazardous waste is stored in accordance with law and no breach will be committed. Undertaking was required to be

filed by all those units within a period of two weeks from the date of the order. It is not made clear in the note of the Assistant Environmental Engineer as to whether there was any breach of the undertaking given by any of those units. If there was any breach of undertaking, the proper course was to file a petition for taking action by way of contempt proceedings.

4. The present note requires the High Court to take action to stop unauthorised movement/disposal of the waste after the officers of the Board have noticed that hazardous waste is being dumped near Ramol village. It would be primarily the function of the Board and its officers to take action under the Act when they notice huge quantity of hazardous waste dumped and they are not required, under the statute, to bring it to the notice of the High Court for seeking a direction on the units to stop unauthorised movement and/or disposal of the waste. It is the basic duty of the concerned officers of the Board under the Environment (Protection) Act, 1986 and other relevant Pollution laws, to ensure that immediate action is taken against any such units who dump hazardous waste or release untreated effluents in violation of the standards and norms laid down for the purpose, and it is not appropriate either for the Gujarat Pollution Control Board, or its officers just to point out those defaults and wrong doings and wait for the High Court's directions in a matter which is entirely within their domain under the statutory provisions. In fact, such a course would enable such nefarious activities to be carried out under the pretext that the matter is pending in the High Court. The authorities are expected to take stringent action to combat pollution and that has to be speedily taken with determination. The duty under the statute which the Board and other authorities are required to discharge, cannot be passed on to the High Court in this manner. The jurisdiction of the High Court in such matters is to issue mandamus when there is failure of duty and the Board or other authorities do not take action, and to command them to take action. Here it is a reverse case. The Assistant Environmental Engineer, a responsible officer of the Board, who is duty bound to take action against the defaulting units dumping the hazardous waste, is asking the Court to take steps to stop unauthorised movement/disposal of hazardous waste. It is entirely for the Board and its officers to find out who are the culprits and take determined and speedy action under the law as they are required to take. There is no stage envisaged under the Pollution laws to wait for the directions from the High Court for taking action. Such a course, to say the least, is nothing short of dereliction

of duty.

5. The Environment (Protection) Act, 1986 empowers the Central Government to take measures under Section 3, which includes taking all measures with respect to laying down procedures and safeguards for the handling of hazardous substances, inspection of any premises etc. and taking all steps for the prevention, control and abatement of environmental pollution. Section 4 of the Act has empowered the Central Government to appoint officers for the purposes of the Act and to entrust to them the powers and functions under the Act, as it may deem fit. Under Section 5, the Central Government is authorised, in exercise of its powers and performance of its functions under the Act, to issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions. The Explanation to Sec.5 makes it clear that such power to issue directions would include the power to direct the closure, prohibition or regulation of any industry, operation or process or stoppage or regulation of the supply of electricity or water or any other service. Section 8 lays down that no person shall handle or cause to be handled any hazardous substance except in accordance with such procedure and after complying with such safeguards as may be prescribed. Penalty for contravention of the provisions of the Act and the Rules, orders and directions is prescribed under Sec.15 of the said Act and it is laid down that whoever fails to comply with or contravenes any of the provisions of the Act, or the Rules made or orders or directions issued thereunder, shall, in respect of each such failure or contravention, be punishable with imprisonment for a term which may extend to five years or with fine which may extend to one lakh rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention. If the failure or contravention continues beyond a period of one year after the date of conviction, the offender becomes liable to be imprisoned for a term which may extend to seven years, as laid down in sub-section (2) of Section 15.

6. It will therefore, be noticed that stringent provisions are made in the Act to ensure that the environmental hazards are removed and speedy and determined action is taken against the defaulters. No provision of this law or any other Pollution law envisages any previous clearance from the High Court for

taking action against the defaulters. Once a matter is filed before the High Court in this manner by a note submitted by a responsible officer of the Board, obviously it can be used an excuse for not taking any action under the Act on the ground that High Court orders are awaited by the Board or its officers. The statutory provisions operate by their own force and the power is to be exercised under them without reference to any outside agency. We do not find a direction in any of the previous orders of this Court which requires the Board or its officials to refer the matter to the High Court whenever they notice hazardous waste and to wait for the directions from the High Court on the defaulters.

7. We expect the Board and its officers to discharge their functions speedily and with determination. We therefore direct that the Board and its officials should take appropriate action under the said Act and other related pollution laws against the erring defaulters without waiting for any directions from the High Court on those defaulters unless otherwise ordered. In the present case, if the Board or its officers find that there is any breach of any provisions of the said Act or connected Pollution laws, they shall take immediate action against the defaulting parties in accordance with law. This petition stands disposed of accordingly with no order as to costs.

(R.K.Abichandani,J.) (J.R.Vora,J.)

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